SUPREME COURT, U.S.

FILED

SEP 23 1957

JOHN T. FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957 — No. 74 Misc.

G. MENNEN WILLIAMS, Governor of the State of Michigan,

- and -

THOMAS M. KAVANAGH, Attorney General of the State of Michigan,

Petitioners,

v.

HONORABLE CHARLES C. SIMONS, Chief Judge, United States Court of Appeals for the Sixth Circuit,

HONORABLE ARTHUR F. LEDERLE, Chief Judge,

- and -

HONORABLE THEODORE LEVIN, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, together forming a Three-Judge United States District Court constituted under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281,

Respondents.

SUPPLEMENTAL BRIEF

Thomas M. Kavanagh
Attorney General of the State of Michigan

Samuel J. Torina
Solicitor General of the State of Michigan

Counsel for Petitioners
The Capitol, Lansing 2, Mich.

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For the further information of this Honorable Court we are including a transcript of the argument of the Motion to Dismiss a Temporary Injunction, dated January 29, 1957 (Appendix 1 of this Brief) and Transcript of Proceedings on Motion to Dissolve Temporary Restraining Order, dated March 8, 1957 (Appendix 2 of this Brief) which we believe will further clarify our position in this matter.

Again, we respectfully urge that the writs applied for are appropriate because in a case of great public importance, the respondent Court has for an unreasonable length of time refrained from performing the judicial function of granting or denying the interlocutory injunction sought by complainants, or denying defendants' Motion to Dismiss the complaint, meanwhile continuing in full force and effect a Temporary Restraining Order issued by a District Judge. This was done despite the fact that the case was ripe for disposition, as asserted by District Judge Lederle, on the two occasions when the matter was argued before the respondent Court (see Appendix H and Appendix K of our prior brief). The effect of the Court's inaction was to grant the complainants the relief they sought by restraining the Governor of the sovereign State of Michigan from the performance of a clear duty laid down by Michigan's Constitution and laws.

For the further information of this Honorable Court, petitioners state that the present status of the criminal case entitled, People v. Voisine, et al, was set for trial for September 9, 1957, and on that date the defendants in the criminal case appeared in court, but objected to proceeding with the trial, counsel for the various defendants pleading the press of other litigation as the basis for a continuance. The result was that the Hon. Frank Fitzgerald, Presiding Judge of the Wayne Circuit Court, granted a continuance until November 12, 1957. Petitioners point out that this date is subsequent to the election date for the City of Ecorse, and that the defendant William Voisine and other defendants are candidates for public office in Ecorse at said election; that it is the position of said defendants, Voisine, et

al, that they may not be removed from office if they are re-elected at said election, for acts committed in a prior term of office.

Respectfully Submitted,

Thomas M. Kavanagh
Attorney General of the State of Michigan

Samuel J. Torina
Solicitor General of the State of Michigan

Counsel for Petitioners
The Capitol, Lansing 2, Mich.

APPENDIX 1

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM W. VOISINE, FRANCIS LaBADIE, ALBERT BUDAY and ELMER KORN, Complainants, vs. JOHN W. CONLIN, G. MENNEN WILLIAMS, THEODORE R. BOHN and THOMAS M. KAVANAGH, Respondents.	No. 16338.

Proceedings had before the Honorable Charles C. Simons, Chief Judge of the Circuit Court of Appeals, The Honorable Arthur F. Lederle, Chief District Judge, and The Honorable Theodore Levin, District Judge, sitting as a statutory three-judge court, at Detroit, Michigan, on Tuesday, January 29, 1957, at 10:00 o'clock in the forenoon.

APPEARANCES:

MR. FRANCIS K. YOUNG,
Appearing for William W. Voisine

MR. JEROME P. CAVANAGH,
Appearing for Francis LaBadie

MR. MICHAEL A. GUEST,
Appearing for Albert Buday

MR. JOSEPH FREED,
Appearing for Elmer Korn

MR. JOSEPH A. SULLIVAN, Deputy Attorney General,

and

MR. NICHOLAS V. OLDS, Assistant Attorney General, Appearing for the respondents.

MR. HOBART TAYLOR, Jr., Assistant Wayne County Prosecutor,
Appearing for The Honorable Theodore R. Bohn, Judge of the Wayne County Circuit Court.

Detroit, Michigan,
Tuesday, January 29, 1957,
10:00 o'clock A.M.

PROCEEDINGS

JUDGE SIMONS: Will you call the case that is set for hearing before this statutory court.

THE CLERK: William W. Voisine, Francis LaBadie, Albert Buday, and Elmer Korn, vs. John W. Conlin, Probate Judge Washtenaw County, G. Mennen Williams, Governor of the State of Michigan, Theodore R. Bohn, Circuit Judge Wayne County, and Thomas M. Kavanagh, Attorney General of the State of Michigan.

JUDGE SIMONS: You may proceed.

MR. YOUNG: May it please this Honorable Three-Judge Court: I am attorney for one of the complainants, William W. Voisine, Mayor of the City of Ecorse.

The only question I first wish to propound to this court is whether or not you wish to take my argument upon the bill of complaint or whether the court desires to proceed with the motion to dismiss that the defendants of the State of Michigan have filed. That is merely a matter of procedure.

JUDGE SIMONS: The motion to dismiss is based, as I glanced through it, on allegations that this court has no jurisdiction. If we have no jurisdiction there is no use going into anything else. How much time would you want to present your view of that question?

MR. YOUNG: My view in reference to the jurisdiction, may it please this Honorable Court, on the question of jurisdiction, will not take too long.

JUDGE SIMONS: What do you mean "too long"? Fifteen minutes?

MR. YOUNG: Or maybe twenty.

JUDGE SIMONS: You may proceed.

MR. YOUNG: I hate to split minutes with the court.

In the first place, the question of jurisdiction is determined by the statute creating the three-Judge court. It is clear and plain under Title 28, 2284, of the United States Code Annotated, which I have set forth in Paragraph One of the bill of complaint, that if we have raised a sufficient constitutional question this court has jurisdiction.

JUDGE SIMONS: Doesn't that question have two parts? First, is there jurisdiction in the court to entertain the bill of complaint and whether or not the court has power to grant the injunction sought?

And the other question that has been developed by the decisions of the Supreme Court as to whether, even if it has power, whether it is appropriate to act upon it in view of the Federal relationship between the constitutional powers and those of the state.

MR. YOUNG: I think you are correct, Mr. Justice Simons, that it breaks itself down into those two parts. In other words, with this one modification, that on the motion to dismiss the allegations of our bill of complaint must be presumed to be true. Whether or not this court eventually decides that there is jurisdiction to grant us relief on the merits again becomes one point. But whether or not we have the right to be here and present our case is another point. In other words, as we are here this morning, what

we are technically asking this court to do here amounts to, as we reduce it to its greatest simplification, is this: is to prevent by this court's injunction the Attorney General of the State of Michigan, the Probate Judge of Washtenaw County, and the other defendants from proceeding with an ouster and/or removal proceeding, which arises out of what we contend is an unconstitutional act by a one-man grand juror, arising out of an unconstitutional act of the State of Michigan which motivated or started the proceeding in operation, until and when we can meet a criminal case which is pending in the Circuit Court for the County of Wayne, and which arises exactly out of the same circumstances.

JUDGE SIMONS: Isn't there a basic question preliminary to that, and that is whether the State itself has power to consider the issues that are involved in this prayer for an injunction, and the constitutionality of the State statute?

MR. YOUNG: I do not believe, when it becomes a question of selecting the forum, may it please the court, that it is always necessary for us to select or go through and exhaust remedies.

JUDGE SIMONS: Well that is rather a general principle, is it not?

MR. YOUNG: It is a general principle.

JUDGE SIMONS: We have had it here before.

MR. YOUNG: It is a general principle in the ordinary procedure; in other words, this court had before it,—your Honor had before you, with Mr. Justice Levin and Mr. Justice Picard, the Albertson vs. Millard case.

JUDGE SIMONS: That is only one of many.